

**IOWA DEPARTMENT OF NATURAL RESOURCES
AMENDED ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: City of Elliott NPDES Permit #78-25-0-01	AMENDED ADMINISTRATIVE CONSENT ORDER NO. 2011-WW-17-A1
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TO: Steve Howell
Mayor
PO Box 57
Elliott, Iowa 51532

I. SUMMARY

This amended administrative consent order (Amended Order) is entered into between the City of Elliott (City) and the Iowa Department of Natural Resources (Department) for the purpose of revising the implementation schedule previously established to achieve compliance with applicable effluent and water quality standards for the operation of a wastewater treatment facility.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Dan Olson, Environmental Specialist
IDNR Field Office #4
1401 Sunnyside Lane
Atlantic, Iowa 50022
Ph: 712-243-1934

Relating to legal requirements

Jon C. Tack
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515-281-8889

II. JURISDICTION

This Amended Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and chapter 567 Iowa Administrative Code (IAC) 10 which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. The City operates a wastewater treatment facility which was constructed in 1968 and consists of a two-celled lagoon facility. Wastewater flows via gravity to a lift station, where it is then pumped approximately one half mile to the lagoon.

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2. On December 21, 2001, the City was issued a Notice of Violation for the unauthorized use of a portable pump at the lift station and unauthorized discharges at the lift station bypass line.
3. On April 27, 2006, the City was issued a Notice of Violation for numerous violations. As a result of these violations, the City was required to repair alarm systems and valves, install a v-notch weir to measure effluent flow, add rip-rap to the lagoon berms, remove the unauthorized portable pump cited in the 2001 Notice, and eliminate the bypass line cited in the 2001 Notice.
4. On September 7, 2007, the City requested permission for an unscheduled discharge due to high flows.
5. On January 30, 2008, the City reported wastewater overflowing the lagoon berms.
6. On March 19, 2008, the City reported a bypass at the lift station due to pump failures.
7. On June 5, 2008, the City reported a bypass at the lift station due to heavy rains.
8. On June 30, 2008, the City submitted a required plan of action to the Department which included final construction dates of December 1, 2008 for lagoon improvements and January 1, 2009 for the lift station.
9. In 2008, the City completed the lining of 4555 linear feet of sewer collection pipes in order to reduce infiltration of groundwater into the system.
10. On March 23, 2009, the City reported a major leak at the lagoon.
11. On April 27, 2009, the City reported a bypass at the lift station due to heavy rains.
12. On February 8, 2010, the City's engineering firm submitted a letter to the Department which stated final completion dates of October 1, 2010 for the lagoon and December 1, 2010 for the lift station.
13. On June 27, 2010, the City reported a bypass at the lift station due to heavy rains.
14. In the fall submittal period of 2010, the City applied for Community Development Block Grant funding to fund the construction of a 3rd wastewater treatment cell at the City wastewater treatment plant and the replacement of valves at the plant. Funding was not obtained for this submittal period.
15. On March 8, 2011, the City reported an unscheduled discharge due to imminent overflows of the lagoon berms.
16. In 2011, the City completed construction of anew lift station for the sewer collection system in order to reduce or eliminate sanitary sewer overflows.
17. The City applied for Community Development Block Grant funding to fund the construction of a 3rd wastewater treatment cell at the City wastewater treatment plant and the replacement of valves at the plant during the fall of 2011 submittal period.

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18. On May 1, 2012, the City submitted notice to the DNR indicating that the City had not received the requested Community Development Block Grant or IJOBS money to complete the planned projects as intended.

19. On June 6, 2012, the City submitted additional information outlining the activities undertaken by the City to address the need for repairs and improvements to the City's wastewater collection and treatment facilities.

20. On July 15, 2012, the City solicited proposals for an engineer to assist the City with facility planning, system evaluation and repair, and application for funding.

21. On August 15, 2012, the City selected an engineer, Snyder & Associates.

IV. CONCLUSIONS OF LAW

The Department and the City agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit.

2. Iowa Code section 455B.173(3) authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems, the discharge of pollutants into waters of the state, and the issuance of permits to waste disposal systems. The Commission has done so at 567 IAC 60 through 69. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. Subrule 64.6 specifies the conditions that are to be included in a permit, including applicable effluent limitations as established in chapters 61 and 62 of the rules.

3. Standard Condition #8 of NPDES Permit #78-25-0-01 requires that all facilities and control systems shall be operated as efficiently as possible and maintained in good working order. This standard permit condition is based upon Subrule 64.7(5)"f". This Subrule states, "the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control to achieve compliance with the terms and conditions of the permit."

4. Subrule 64.7(6) requires the owner of a publicly owned treatment works to prepare and implement a plan of action to achieve and maintain compliance with final effluent limitations in its NPDES permit. Such a plan must be approved or disapproved by the Department.

5. The City has been in violation of the above stated provisions due to its unauthorized discharges of sewage and its failure to implement an approved plan of action.

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V. ORDER

The Department orders, and the City agrees to comply with, the following provisions:

1. By September 15, 2012, the City shall retain an Iowa-licensed professional engineer to assist the City with facility planning, system evaluation and repair, and application for funding.
2. By October 15, 2012, the City shall complete an analysis of the sludge volumes and depths in the City wastewater treatment lagoons and determine the need for sludge removal. The analysis shall be submitted to the DNR.
3. By October 15, 2012, the City shall complete an analysis of existing sewer rates to determine the long-term feasibility of the existing rates, the impact of such rates on the eligibility of the City for grant funding, and the ability of the City to undertake necessary repairs and improvements with the current rate structure. The DNR takes no position in regard to current or proposed rates. It is the obligation of the City to achieve compliance regardless of the funding mechanism.
4. By January 1, 2013, the City shall repair or replace all valves related to the operation of the wastewater treatment facility such that the facility is fully operational as permitted. A stipulated penalty of \$100 per day is hereby assessed for each day after January 1, 2013 for which the valve repairs and improvements have not been completed. Once this provision is satisfied, no further penalty is assessed by this Amended Order for any future valve malfunction, but a future order may be issued if warranted.
5. By May 1, 2013, the City shall submit to the DNR an updated facility plan which includes a description of collection system improvements to be undertaken by the City.
6. A stipulated penalty of \$100 per month is hereby assessed for the failure of the City to comply with any deadline contained herein with the exception of paragraph 4, above, for which the enhanced penalty provisions contained therein shall apply.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at Chapter 567 IAC 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with stipulated penalties.

a. Economic Benefit. The City has achieved significant cost savings by failing to adequately maintain its wastewater treatment facility. The execution of this Amended Order constitutes a good faith attempt to achieve compliance and therefore the Department has chosen not to assess an economic benefit penalty at this time. In the event of non-compliance with this

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Amended Order, the Department reserves the right to consider past economic benefit in the assessment of future penalties.

b. Gravity of the Violation. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. Effluent limitations are established to protect human health and the environment. The ongoing failure of the City to maintain compliance with water pollution control laws has resulted in the discharge of effluent without a permit and in violation of the applicable regulations and effluent limitations. The actions of the City endangered the public and threatened the environmental health of the receiving waters of the state. In order to resolve this matter most equitably and efficiently, the Department has chosen not to issue a penalty at this time. The stipulated penalties contained herein take into consideration the gravity of the underlying violations, but do not fully assess the penalties supported by this factor. In the event of non-compliance with this Amended Order, the Department reserves the right to consider the history of continuing permit violations in the assessment of future penalties.

c. Culpability. The City is required by law to ensure that its wastewater treatment facility is constructed and operated in compliance with applicable standards. The continuing unauthorized discharge of wastewater by the City represents a violation of that requirement. The stipulated penalties contained herein take into consideration the culpability of the City in regard to the underlying violations, but do not fully assess the penalties supported by this factor. In the event of non-compliance with this Amended Order, the Department reserves the right to consider past conduct in the assessment of future penalties.


VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Amended Order is entered into knowingly by and with the consent of the City. By signature to this Amended Order, all rights to appeal this Amended Order are waived.

VIII. NONCOMPLIANCE

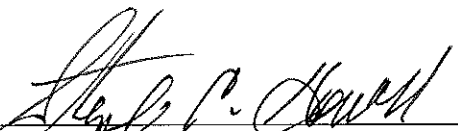
Compliance with sections V.1-V.5 of the Amended Order constitutes full satisfaction of all requirements pertaining to the violations described in this Amended Order. Failure to comply with this Amended Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code section 455B.191. The Department reserves the right to issue an administrative order or to refer to the Attorney General's Office in lieu of collecting stipulated penalties pursuant to this Amended Order.

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CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 10th day of
September, 2012



STEPHEN C. HOWELL, MAYOR
CITY OF ELLIOT

Dated this 4th day of
September, 2012

Field Office #4; Jon Tack; WES; LC(1)